

Message Text

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ACTION STR-07

INFO OCT-01 STRE-00 ISO-00 AGRE-00 CEA-01 CIAE-00
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EUR-12 NEA-11 CEQ-01 OES-07 FTC-01 /176 W
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P 022059Z JUN 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 0415
INFO AMEMBASSY BRUSSELS
AMEMBASSY OTTAWA
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E.O. 11652: N/A
TAGS: MTN, ETRD
SUBJECT: MTN: STANDARDS CODE MEETING WEEK OF
- MAY 22 AND 29, 1978

1. SUMMARY: KEY PARTICIPANTS IN STANDARDS SUBGROUP
CONDUCTED MOST OF THEIR WORK IN INFORMAL SESSIONS DURING
WEEK OF MAY 22. FORMAL SUBGROUP SESSION MET FOR ONLY ONE
DAY. AT INFORMAL MEETING, U.S. REJECTION OF EC PROPOSAL
ON LEVELS OF OBLIGATIONS STARTLED EC AND LATER PRO-
VOKED SHARP EC REACTION IN SUBGROUP. U.S. POSITION
DID, HOWEVER, STIMULATE USEFUL INFORMAL GROUP DEBATE
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ON CURRENT GATT RIGHTS AND OBLIGATIONS OF CENTRAL
GOVERNMENTS VIS-A-VIS LOCAL GOVERNMENTS. EC JOINED
WITH U.S. IN SUGGESTING RETENTION OF PREVIOUS DRAFT
CODE LANGUAGE REGARDING PARTICIPATION IN CERTIFICATION
SYSTEMS IN NORDIC PROPOSAL ON CERTIFICATION SYSTEMS.
DISCUSSION ON DISPUTE SETTLEMENT CLARIFIED POSITIONS
AND U.S. AND EC AGREED THAT GATT CHAIRMAN SHOULD DRAW

UP A DRAFT TEXT WITH BRACKETS AS A BASIS FOR NEGOTIATION.
SUBGROUP ADVANCED WORK ON S&D BY FOCUSING DISCUSSION
ON SECRETARIAT PAPER. END SUMMARY.

2. EC PROPOSAL ON LEVELS OF OBLIGATION: PRIOR TO
SUBGROUP MEETING U.S. AND EC MET PRIVATELY TO DISCUSS
EC PROPOSAL. U.S. REP (NEWKIRK) STATED EC PROPOSAL
IS UNACCEPTABLE TO THE U.S. AND CITED THE 1975
AGREEMENT TO INCLUDE PROVISIONS IN CODE REGARDING
STATE OR LOCAL GOVERNMENT ACTIVITIES ON THE UNDER-
STANDING THAT TWO LEVELS OF OBLIGATIONS WOULD BE
USED. U.S. PERCEPTION OF EC PROPOSAL IS THAT IT IS
SEEKING A DE FACTO ABSOLUTE OBLIGATION BY USG TO ENSURE
STATE AND LOCAL GOVERNMENT COMPLIANCE WITH CODE.
FURTHERMORE, THE PROPOSAL COULD BE CONSTRUED AS NOT
CONTAINING ANY LEGAL REQUIREMENT TO USE "BEST ENDEAVORS".
EC (ABBOTT) EXPRESSED SURPRISE AT U.S. REACTION AND CON-
TESTED THE ASSERTION OF ANY SUCH AGREEMENT, NOTING
THAT DIFFERENCES OF OPINION ARE DOCUMENTED IN THE 3B
WORKING PARTY REPORT ON THE DRAFT CODE. ABBOTT
SAID THAT THE EC PROPOSAL WOULD NOT ABSOLVE ADHERENTS
FROM USING "BEST ENDEAVORS" TO PROMOTE COMPLIANCE WITH
CODE, AND THAT SUCH "ENDEAVORS" WOULD HAVE TO BE
EXPLAINED, IF NECESSARY, TO AN INTERNATIONAL FORUM.
ABBOTT SAID THAT, IN VIEW OF U.S. POSITION, THE EC
WOULD HAVE TO REASSESS BALANCE OF OBLIGATIONS IN CODE.
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3. U.S. TOLD INFORMAL GROUP THAT IT DOES NOT SEE HOW
IT CAN ACCEPT EC PROPOSAL FOR REASONS CITED PARA 2
ABOVE. AUSTRALIA (SPENCER) AND CANADA (DENIS) STATED
THAT THEY COULD NOT ACCEPT THE PRESENT EC FORMULATION.
JAPAN (TAMORI) SAID EC PROPOSAL DOES NOT GO FAR ENOUGH
SINCE, IN HIS VIEW, SANCTIONS COULD NOT ADEQUATELY
COMPENSATE FOR NULLIFICATION OR IMPAIRMENT OF CODE
RIGHTS. THE NORDICS SAID THEY FAVORED THE CONCEPT
EMBODIED IN THE EC PROPOSAL.

4. REMAINDER OF DISCUSSION FOCUSED ON NOTION OF
"REASONABLE EXPECTATIONS" OF THE RESULTS FROM USING
"BEST ENDEAVORS" UNDER THE GATT ARTICLES XXIV:12 AND
XXIII AND THE CODE. ACCORDING TO AUSTRALIA'S INTER-
PRETATION OF THE EC PROPOSAL, THE BASIC IDEA IS ALREADY
COVERED IN GATT PROVISIONS AND NEED NOT BE MADE MORE
EXPLICIT AT RISK OF UNNECESSARILY AROUSING DOMESTIC
POLITICAL DIFFICULTIES. UNDER GATT XXIV:12 A CP IS
OBLIGED TO USE REASONABLE MEASURES TO ENSURE OBSERVANCE
OF REGIONAL AND LOCAL GOVERNMENTS OF THE GATT. IF AN
INTERNATIONAL TRADE PROBLEM ARISES FROM A LOCAL GOVERN-

MENT ACTION, ANOTHER CP COULD BRING A GATT CASE TO
DETERMINE WHETHER THE CP HAD FULFILLED ITS OBLIGATIONS
UNDER XXIV:12. IN ADDITION, HOWEVER, AN AFFECTED
CP COULD RAISE A CASE UNDER XXIII ON THE GROUNDS THAT
THE BENEFITS IT REASONABLY EXPECTED TO OBTAIN FROM
THE GATT ARE BEING IMPAIRED. CHAIRMAN WILLIAMS EXPLAINED
THE ACCEPTED GATT DOCTRINE OF "REASONABLE EXPECTATIONS",
BUT CONCLUDED THAT ISSUE TURNED ON WHAT ADHERENTS
REASONABLY EXPECTED FROM FEDERAL GOVERNMENT SIGNATORIES
VIS-A-VIS LOCAL GOVERNMENT COMPLIANCE. NORDICS
(STALBERG) NOTED THAT THEIR PROPOSAL FOR A NEW 20(B)
WOULD GO PART WAY IN DEFINING "REASONABLE EXPECTATIONS"
OF ADHERENTS, SINCE ADHERENTS' DOMESTIC IMPLEMENTATION
PLANS WOULD BE CLEAR. CANADA CALLED FOR A BETTER
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APPRECIATION OF GATT ON THIS ISSUE AS A GUIDE FOR

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NEA-11 IO-13 CEQ-01 OES-07 FTC-01 /176 W

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INFO AMEMBASSY BRUSSELS

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CODE PROVISIONS IN THE AREA OF LEVELS OF OBLIGATIONS. CANADA ALSO CITED BELIEF THAT EC PROPOSAL WOULD ONLY REQUIRE, IN CASES OF DISPUTE, EXAMINATION OF EFFECT OF ACTION TAKEN BY ADHERENT, WHILE DRAFT CODE WOULD REQUIRE EXAMINATION OF BOTH ACTION TAKEN UNDER "BEST ENDEAVORS" OBLIGATION AND EFFECT OF SUCH ACTION. EC DID NOT ACCEPT AUSTRALIAN INTERPRETATION OF "REASONABLE EXPECTATIONS" AND STATED THAT PRECISION IS NEEDED AS TO WHAT IS EXPECTED FROM ADHERENTS.

5. IN SUBGROUP MEETING EC DID NOT INTRODUCE ITS TEXT, BUT EMPHASIZED THE IMPORTANCE OF ITS PROPOSAL TO "FILL THE GAP" BETWEEN LEVELS OF OBLIGATIONS. IF THEIR PROPOSAL IS NOT ACCEPTED, EC CLAIMED THEY WILL HAVE LIMITED OFFICIAL USE

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TO RECONSIDER THEIR POSITION IN REGARD TO THE CODE IN GENERAL. U.S. DEL (WALLAR) RESPONDED THAT U.S. SAW NO GAP, CITING PREVIOUS DEBATES ON ISSUE, OBSERVED THAT U.S. ALSO ATTACHES IMPORTANCE TO ITS CODE PROPOSALS AND REMARKED THAT ALL COUNTRIES WOULD BE CONSTANTLY ASSESSING THEIR POSITIONS ON CODE UNTIL NEGOTIATIONS ARE CONCLUDED. OTHER DELS DID NOT COMMENT AND ISSUE WAS NOT PURSUED.

6. DISPUTE SETTLEMENT (D/S): AT THE INFORMAL MEETING THE EC TABLED A TEXT ON D/S, LARGELY BASED ON GATT ARTICLE XXIII PROVISIONS AND PARTS OF TEXT FROM GOVERNMENT PROCUREMENT SUBGROUP. EC SPECULATED THAT THEIR TEXT MIGHT HELP OBTAIN APPLICABILITY OF STANDARDS CODE TO AGRICULTURE AND FACILITATE AGREEMENT ON REGIONAL CERTIFICATION ARRANGEMENTS. EC TEXT DOES NOT EXPLICITLY MENTION PANELS OR TIME LIMITS, LEAVES MAXIMUM FLEXIBILITY TO COMMITTEE, SPECIFIES THAT SANCTIONS BE CONFINED TO CODE, AND PROVIDES FOR WITHDRAWAL OF ADHERENTS FROM CODE IN EVENT OF ADVERSE D/S DECISION. SEVERAL DELS REITERATED SUPPORT OF ADHERENT'S RIGHT TO A PANEL (U.S., BRAZIL, SWISS, CANADA). EC, SWISS, BRAZIL, NORDIC, CANADA, AND AUSTRALIA DISAGREED THAT ALL PARTIES TO DISPUTE MUST AGREE TO REFER DISPUTE TO COMMITTEE AFTER BILATERAL PHASE. AUSTRALIA, NORDICS AND JAPAN AGREED WITH EC'S "EVOLUTIONARY" AND FLEXIBLE APPROACH TO D/S, INCLUDING FLEXIBLE TIMETABLES. BRAZIL, CANADA, AND U.S. CITED NEED FOR SPECIFIC PROCEDURES AND LIMITS. SWISS STATED THAT ANY PROCEDURE AGREED BY ALL PARTIES SHOULD BE APPROVED, BUT AS LAST RESORT ANY ADHERENT HAS RIGHT TO A PANEL. U.S. REITERATED NEED FOR PANELS, INCLUDING

FULL INVESTIGATION AND WRITTEN REPORT OF FINDINGS.
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RESPONDING TO CRITICISMS OF INFLEXIBILITY IN U.S. APPROACH, NEWKIRK CONCEDED THAT A PANEL MAY NOT BE ABLE TO REACH CONCLUSION OR RESOLVE A DISPUTE, BUT STILL COULD COLLECT TECHNICAL EVIDENCE, CONDUCT RESEARCH, AND REPORT TO THE COMMITTEE. U.S. MAINTAINED THAT PANEL PROCEDURES SHOULD BE AUTOMATIC UPON REQUEST, BUT NOTED THAT MULTIALTERAL REVIEW OF COMMITTEE OR ANY APPROPRIATE BODY WOULD NOT BE RULED OUT IF AGREED BY ALL PARTIES TO A DISPUTE. U.S. AND EC AGREED THAT SUBGROUP CHAIRMAN SHOULD TRY TO DRAFT A SINGLE BRACKETED TEXT ON D/S FOR FUTURE NEGOTIATING PURPOSES.

7. RELATIONSHIP BETWEEN CODE AND GATT: U.S. REITERATED VIEW THAT SECTION 22(F) OF CODE SHOULD BE DELETED, AND THAT ADHERENT DOES NOT HAVE RECOURSE TO GATT XXIII PROCEDURES FOR BREACH OF CODE OBLIGATIONS UNLESS GATT RIGHT OR OBLIGATION IS BREACHED. SWISS, EC AND HUNGARY AGREED SECTION 22(F) SHOULD BE DELETED. CANADA SAID CURRENT LANGUAGE ON THIS POINT IS UNSATISFACTORY, NOTING THAT CANADA IS CONCERNED WITH MORE GATT PROVISIONS THAN JUST D/S. WHEN EC EXPRESSED NEED FOR LIST IN CODE TO INCLUDE GATT ARTICLE XX SITUATIONS (E.G., HEALTH AND SAFETY PROBLEMS) U.S. RESPONDED THAT SUCH SITUATIONS WOULD BE COVERED BY U.S. PROPOSAL IN 2(B) BY LISTING SITUATIONS WHERE INTERNATIONAL STANDARDS MIGHT BE INAPPROPRIATE FOR NATIONAL USE.

8. NORDIC PROPOSALS ON CERTIFICATION SYSTEMS: NORDICS SUBMITTED A REDRAFT OF THEIR PROPOSAL ON CERTIFICATION SYSTEMS IN LIGHT OF COMMENTS MADE AT THE PREVIOUS SESSION. THE EC INTRODUCED A PAPER BASED ON THE NORDIC REDRAFT WHICH INCORPORATES LANGUAGE SIMILAR TO THEIR PROPOSALS FOR RESTRICTED NATIONAL AND REGIONAL CERTIFICATION SYSTEMS (9(E), 13(H), AND THE FOOTNOTED LANGUAGE FOR 9(F)) CONTAINED IN BRACKETS IN DRAFT CODE. U.S. NOTED NORDIC ATTEMPT TO CLARIFY TEXT, STATED U.S. CONSIDERATION LIMITED OFFICIAL USE

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OF THE PROPOSAL WAS CONTINGENT UPON CERTAIN CHANGES AND CHIDED EC FOR BLOCKING PROGRESS. U.S. REINTRODUCED PROPOSALS TO COUNTER THOSE OF EC ON ISSUE OF PARTICIPATION IN REGIONAL CERTIFICATION SYSTEMS. INFORMAL GROUP PROCEEDED WITH AN EXTENSIVE REVIEW OF NORDIC

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TEXT. IN RESPONSE TO U.S. QUESTIONS ON TWO KEY ISSUES,
STALBERG STATED THAT THEIR PROPOSAL INCLUDED THE CONCEPT
OF CERTIFICATION SYSTEMS BEING OPEN "AT THE SAME TIME"
FOR NON-MEMBERS IN THE LANGUAGE "UNDER CONDITIONS NO
LESS FAVORABLE". IN ADDITION, HE STATED THAT "ACCESS"
MEANT OBTAINING THE MARK ACCORDED TO PARTICIPANTS IN
THE CERTIFICATION SYSTEM OR SYSTEM MEMBERS IN WHICH
THE PRODUCT WAS CERTIFIED. ALTHOUGH DRAFT LANGUAGE
NOT PRESENTED TO SUBGROUP, NORDICS INVITED INTERESTED
DELS TO CONSULT REGARDING THEIR CURRENT EFFORT TO
STREAMLINE CODE'S CERTIFICATION PROVISIONS.

9. NATIONAL TREATMENT CLAUSE: U.S. INTRODUCED NOTION
THAT TECHNICAL SPECIFICATION SECTION OF CODE SHOULD
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CONTAIN A NATIONAL TREATMENT CLAUSE TO PROVIDE SYMMETRY WITH CERTIFICATION SECTIONS. NORDICS SUGGESTED THAT SUCH A CLAUSE SHOULD USE PRESENT GATT ARTICLE III:4 LANGUAGE. EC QUESTIONED HOW THE CLAUSE WOULD APPLY IN PRACTICE AND CITED EXAMPLE OF STANDARDS SPECIFYING ACCEPTABLE LEVELS OF DDT RESIDUE, E.G., LEVELS OF DDT PERMITTED IN COUNTRIES THAT DO NOT ALLOW THE USE OF DDT. THUS, THERE ARE DIFFERENT STANDARDS FOR DOMESTIC PRODUCTS KNOWN TO BE FREE OF DDT, VERSUS IMPORTED PRODUCTS ON WHICH TESTS MUST BE CONDUCTED TO ENSURE ACCEPTABLE DDT LEVELS. U.S. SAID THAT THRUST OF PROPOSAL WAS TO ADDRESS DIFFERENT STANDARDS LEVEL OF COMPLIANCE FOR DOMESTIC AND IMPORTED PRODUCTS. SWITZERLAND (LEMPEN) NOTED THAT ADOPTION OF U.S. IDEA WOULD ENSURE THAT AN IMPORTANT CONCEPT OF THE GATT WAS INCLUDED IN CODE.

10. SPECIAL AND DIFFERENTIAL (S/D) TREATMENT FOR DEVELOPING COUNTRIES: CHAIRMAN INTRODUCED HIS TEXT COMBINING VARIOUS S&D PROPOSALS UNDER TOPICAL HEADINGS (MTN/NTM/154) AND ASKED WHETHER DELS COULD USE THIS AS BASIS FOR DISCUSSION, WITH UNDERSTANDING THAT ALL PROPOSALS STILL ON TABLE. U.S. DEL INDICATED WILLINGNESS TO ENGAGE IN DETAILED DISCUSSION OF S&D AND QUERIED WHETHER OTHER DELS COULD USE SECRETARIAT DOCUMENT FOR FOCUS OF DISCUSSION. MEXICO (DELGADO) AND BRAZIL (MEDERIOS) RESPONDED IN AFFIRMATIVE, WITH BRAZIL STATING THAT THE TWO MOST IMPORTANT ISSUES FOR LDC'S WERE THE PROVISIONS RELATING TO "INDIGENOUS TECHNOLOGY" AND FLEXIBLE OBLIGATIONS FOR LDC'S. IN RESPONSE TO EC, CANADIAN AND U.S. QUESTIONS ON MEANING OF "INDIGENOUS TECHNOLOGY", MEDERIOS REPLIED THAT SUCH TECHNOLOGY IS USED FOR PRODUCTION OF SPECIALIZED PRODUCTS WHICH GENERALLY ARE LIMITED OFFICIAL USE

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TRADED ONLY ON A REGIONAL SCALE, E.G. FOOD PRODUCTS, TEXTILES, AND HANDICRAFTS. MALAYSIAN STANDARDS EXPERTS POINTED OUT THAT IN SOME INSTANCES AN INTERNATIONAL STANDARD MIGHT CAUSE A BARRIER TO TRADE, AND SUGGESTED THAT SUCH STANDARDS BE SUBJECT TO CODE'S FUNDAMENTAL OBLIGATION NOT TO CAUSE TRADE OBSTACLES. IN A DISCUSSION OF TRANSFER OF TECHNOLOGY, BRAZIL AND NIGERIA NOTED THAT THE BRAZILIAN PROPOSAL RELATED TO ASSISTANCE ON SPECIFIC TECHNICAL REGULATIONS OF DC'S AND NOT GENERAL ASSISTANCE. THIS APPARENT NARROWING OF THE PRESENT PROPOSAL WAS GREETED WITH ENCOURAGEMENT BY NORDICS WHO BELIEVE THAT WORK MIGHT CONTINUE WITH THIS FOCUS. U.S. DREW ATTENTION TO GATT INFORMAL DOCUMENT OUTLINING STANDARDIZATION ACTIVI-

TIES OF OTHER INTERNATIONAL ORGANIZATIONS (INCLUDING STANDARDS RELATIONSHIP WITH TECHNOLOGY TRANSFER) AND URGED DELS TO CONCENTRATE ON MAIN OBJECTIVES OF CODE, I.E. TRADE BARRIERS CAUSED BY STANDARDS. IN SUMMING UP, CHAIRMAN NOTED THAT WORK SHOULD PROCEED ON NARROWING OF DIFFERENCES ON THE PROPOSALS INCLUDED IN MTN/NTM/W/154.

11. APPLICABILITY OF THE CODE TO AGRICULTURAL PRODUCTS: DURING INFORMAL SESSIONS, THE CHAIRMAN EXPRESSED HIS HOPE THAT A TECHNICAL REVIEW OF THE APPLICABILITY OF THE CODE TO AGRICULTURE WOULD RESUME SOON. U.S. AGREED, NOTING THAT IT WAS TOO DANGEROUS TO LEAVE THE WORK UNTIL THE END BECAUSE MINOR MODIFICATIONS MIGHT BE NECESSARY TO ENSURE THAT THE CODE COULD APPLY TO AGRICULTURAL PRODUCTS. BRAZIL INDICATED THAT NON-APPLICATION OF CODE TO AGRICULTURE WOULD LESSEN BRAZIL'S INTEREST IN CODE BY 80 PERCENT. IN A PRIVATE CONVERSATION, ABBOTT INDICATED THAT EC WAS OPTIMISTIC IN AGREEING TO AGRICULTURAL COVERAGE OF CODE AND THAT THE EC'S POSITION MIGHT BE INFLUENCED BY THE DEGREE OF FLEXIBILITY IN THE CODE'S D/S AND ENFORCEMENT PROVISIONS. U.S. RAISED THE ISSUE LIMITED OFFICIAL USE

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IN SUBGROUP MEETING TO REMIND DELS OF OUTSTANDING QUESTION, BUT OTHER DELS MADE NO COMMENT.

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12. OTHER POINTS - U.S. NOTED IN SUBGROUP THAT ILLUS-
TRATIVE LIST OF EXAMPLES FOR USE OF THE WORD "INAPPRO-
PRIATE" IN SECTION 2(B) SHOULD APPEAR IN CODE TEXT.
NEW ZEALAND (GREIG) SAID IN PLURILATERALS THAT NORDIC
COMPROMISE LANGUAGE ON PROCESSES AND PRODUCTION
METHODS WAS NOT SUFFICIENT.

13. FUTURE WORK: NEXT MEETING WILL BE SET AFTER
INFORMAL CONSULTATIONS AMONG DELEGATIONS AND THE SUB-
GROUP CHAIRMAN.

14. DRAFTED BY WALLAR/SUPPE-BLANEY/ABELSON. MCDONALD

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Message Attributes

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Review Release Date: N/A
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